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June 17, 2002

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Subject: IB Docket No. 02-111

Dear Chairman Powell and Commissioners:

Opposition to Petition for Declaratory Ruling Allowing Indirect Foreign Ownership of the Incumbent local exchange carrier in the Commonwealth of Northern Mariana Islands (CNMI)

REF: FCC File #ISP-PDR-20020411-00013

Background

A consortium operating under the name Pacific Telecommunications Inc. (PTI) has been formed to purchase the assets of Micronesian Telecommunications Corporation (MTC). MTC is a virtual monopoly for telecommunications services in the US-administered territory of the Commonwealth of the Northern Mariana Islands (CNMI). MTC wholly owns GTE Pacifica and is doing business in the CNMI as Verizon-Pacifica. PTI's majority shareholder (50%) is Prospector Investment Holdings Inc., which is registered in the Cayman Islands. THC Holdings, which owns 30% of PTI, is run by Tan Holdings, non-US citizens who have significant holdings in CNMI businesses ranging from shipping, to garment manufacturing, hotel, and media ownership.

Startec/PCI, based in Hagatna, Guam with parent offices in Potomac, MD, is a full-service telecommunications company that has been doing business in Guam and the CNMI for almost two decades. Startec/PCI strongly objects to the purchase of what PTI describes in its official filings to the Commission as the "incumbent local exchange carrier" by PTI or any other foreign entity.

Reasons for Opposition

1. PTI is requesting that the Commission waive the rules against indirect foreign ownership because PTI represents WTO countries. They are requesting the flexibility to establish up to 87.1% indirect foreign ownership comprised of investors from WTO countries. As noted above, 50% of PTI is owned by a Cayman Islands corporation. The Cayman Islands are indeed part of the United Kingdom, a WTO member. However, it appears to us that individual shareholders are trying to use their ability to establish a corporation in a well-known "off shore tax shelter" to establish a de-jure explanation of what is de-facto foreign ownership outside of WTO protection. We request that the Commission note the actual citizenship of these major investors. We also ask the Commission to raise what we believe to be the obvious question: why incorporate offshore unless one is trying to establish a virtual monopoly in a USA territory?

2. There is ample documentation in the media that THC holdings (30% of THC according to PTI's own filing) has engaged in monopolistic practices and has often run afoul of US government regulations, in particular the treatment of workers at their Saipan garment factories. A sample report from the Washington Post is attached.
3. What PTI refers to as "the incumbent local exchange carrier" in the CNMI is actually what we at Startec/PCI would term "a virtual monopoly". There is currently no realistic ability for other US telecom companies to establish competition by gaining access to key facilities, including ownership of inter-island cables and the local satellite earth station. Such rights are guaranteed to US competitors under the Telecommunications Act of 1996.
4. Therefore, we question whether PTI's characterization of MTC as the "incumbent local exchange carrier" is an effort to pull the wool over the Commission's eyes with regard to what is really happening here, more than 9-thousand miles from Washington, DC.
5. Specifically, Startec/PCI believes that, under the Commission's definitions, there are TWO telecommunications entities embodied together in the current "virtual monopoly".
6. The first is actually a classic local exchange carrier (ILEC), which provides what amounts to monopoly "last mile" service to customers in the CNMI.
7. The second is an inter-exchange carrier (IXC), which provides what amounts to a virtual monopoly on long distance – both national (within the USA) and international long distance service. Internet services, especially broadband services such as DSL are either non-existent or primitive by even rural USA standards. Companies such as Startec/PCI are "technically" able to purchase from the incumbent the necessary LD and ILD connectivity, but the (un-reported and unpublished) tariffs are the same as those offered to any other customer (i.e. there are no standard "carrier agreements" and the incumbent does not conform to recognized integrated rate regimes that are applicable to other LECs within American territory).
8. Startec/PCI believes that it is therefore both incorrect and misleading for PTI to describe MTC in its filing to the Commission as simply the "incumbent local exchange carrier". This appears to mask the incumbent's duties, under the Telecommunications Act of 1996, to provide competitive LD and ILD services, as well as to provide the facilities that it has enjoyed as a virtual monopoly – in this case the inter-island submarine cables and earth station access – to other carriers at cost.
9. We ask the Commission to note that, within the CNMI, less than ten-percent of the capacity on inter-island cables controlled by the incumbent is actually in use. By contrast, costs have not been reduced since the cables became operational in 1996.
10. The incumbent also charges all potential competitors, including Startec/PCI, a surcharge of $0.15 per minute on all inter-island calls within the CNMI voice, data and internet), which we also regard as a violation of the 1996 Act, as we would have no choice but to pass this on to our customers and therefore me "non-competitive".
11. The incumbent has also failed to report and publish tariffs, as is standard industry practice supported by the Commission. This allows the incumbent to set their own variable terms for the settlement of carrier disputes.
12. PTI has proposed a structure that mirrors the existing virtual monopoly, with no provisions to foster competition that would bring much needed telecommunications technologies and more competitive pricing to the CNMI, which is an under-served and economically depressed territory of the United States.
13. Startec/PCI has met with CNMI legislators, including the respective chairmen of the House and Senate Communications Committees. They have agreed that there is "no level playing field" with

regard to telecommunications competition in the CNMI and have pledged their assistance in taking corrective action.

14. The structure proposed by PTI not only works against those efforts, but also would provide for foreign ownership of a system that serves the CNMI government and key Federal agencies in the CNMI such as the FBI and the US Marshal Service, the Federal District Court, the US Attorney and the Military Reserve. Startec/PCI believes that, especially during the current international security climate, this would not be appropriate.

Conclusion

Startec/PCI asks that the Commission deny the request from PTI to establish indirect foreign ownership of the LEC, Verizon Micronesia, in the CNMI and its subsidiary, Verizon Pacifica. At the very minimum, we request that the Commission put this on hold, while entertaining ideas to establish stipulations from the prospective investors. These stipulations would guarantee compliance with the Telecommunications Act of 1996, reduce the percentage of foreign ownership to more reasonable levels, "level the playing field" to allow for competitive service and therefore the best telecommunications advantages to the under-served people of the CNMI – and allow our homeland security services to determine whether indirect foreign ownership of these key telecommunications infrastructures could amount to a threat to US National Security.

Sincerely,

Anthony A. Das
Senior Vice President/Managing Director for Asia and the Pacific
Startec/PCI

Human Rights Group Urges Action on Saipan

Report Details Abuse of Minimum-Wage Garment Workers on U.S.-Affiliated Island

By William Branigin
Washington Post Staff Writer
May 24, 1999

Human rights and labor groups are urging the Justice Department to crack down on the trafficking and abuse of foreign workers on a U.S. island in the western Pacific.

The plea, in a letter to Attorney General Janet Reno, accompanies the release today of a report on an eight-month undercover investigation by a Washington-based human rights group, Global Survival Network, into conditions in the Commonwealth of the Northern Mariana Islands. The group found that the U.S.-affiliated archipelago "has become a center of international human trafficking operations" involving Chinese and Japanese organized crime, debt bondage, sexual slavery and the exploitation of workers in garment sweatshops.

The letter to Reno, signed by a dozen organizations including the American Bar Association's East European Law Initiative, also asked her to look into whether a leading congressional friend of the commonwealth's $1 billion-a-year garment industry, House Majority Whip Tom DeLay (R-Tex.), "improperly" used his position to block reform legislation.

A spokesman for DeLay said Delay's actions are aboveboard and that DeLay believes the proposed legislation would mean "big government" and destroy the islands' "free-market economic growth."

Successive commonwealth governments have charged that reports of human rights and labor abuses on the islands are exaggerated and asserted that local authorities are adequately dealing with those that occasionally arise.

The Global Survival Network's report and the letter to Reno represent the latest challenge to the commonwealth and its garment industry, which have been fighting greater federal controls, private lawsuits and charges of health violations. Class-action suits filed in January on behalf of 50,000 current and former garment workers seek to hold 18 major U.S. retailers responsible for a "racketeering conspiracy" to produce clothing in sweatshop conditions on the commonwealth's main island, Saipan.

Rep. George Miller (D-Calif.) proposed legislation in February to impose federal immigration and minimum wage laws on the commonwealth. Last month, a bipartisan group including Sen. Spencer Abraham (R-Mich.) and Rep. Bob Franks (R-N.J.) introduced a bill to end the ability of foreign-owned factories, using "ill-treated indentured labor" and materials from China, to put "Made in U.S.A." labels on their clothing and avoid duties and quotas at an annual cost to the United States of $200 million in revenue and 20,000 jobs.

Under a 1976 "covenant" with the United States, the commonwealth sets its minimum wage -- now $3.05 an hour -- and is exempt from federal immigration laws. That has allowed it to bring in 38,000 foreign guest workers, mostly from the Philippines and China. They do most of the work in the private sector and outnumber the 27,000 native islanders and other U.S. citizens, who have a 16 percent unemployment rate.

In carrying out the Global Survival Network's investigation, the group's director, Steven R. Galster, posed as a clothing buyer from New York and used a hidden camera to videotape visits to garment factories and meetings with industry officials on Saipan.

The videotape shows Chinese women toiling at sewing machines beside huge piles of clothing on crowded factory floors in what Galster described as unsafe working conditions. Factory officials explain that, unlike in their homelands, the workers cannot easily change jobs, because that requires approval from the local government, which usually refuses.

Workers are charged up to $10,000 each by recruiters to get the jobs, which they are told pay generous salaries "in the United States," Galster said. The system has spawned gambling and loan-sharking by Chinese organized crime on the islands, and some of the female garment workers have been diverted to a burgeoning sex trade on Saipan that caters largely to Japanese tourists, he said.

Among those interviewed with the hidden camera was Willie Tan, a powerful Saipan garment manufacturer who has been fined by the federal government for labor law violations. He spoke of his close relationship with DeLay, who he said had promised to prevent any reform legislation from advancing in the House.

"You know what Tom told me?" Tan said. "He said, 'Willie . . . I make the schedule of the Congress. And I'm not going to put it on the schedule. . . .' So Tom told me, 'Forget it, Willie. No chance.' "

The letter asked Reno to investigate whether DeLay "may have improperly promised the use of his elective office to protect and defend criminal enterprises on the island of Saipan."

DeLay's deputy chief of staff, Tony Rudy, said DeLay "has made it publicly clear" he opposes the bills in question and wants to prevent federal bureaucrats from imposing "more red tape and regulations" and "trying to govern the islands from 12,000 miles away." He said DeLay also opposes the minimum wage in the United States.

"They're trying to kill economic growth on the islands," Rudy said. "The whole campaign is driven by labor unions that hope these jobs will move from Saipan to Philadelphia. In reality, they're going to move to the Philippines."

Saipan Workers Describe Slavery of Sweatshops

They say American Dream turned into nightmare

Robert Collier, Chronicle Staff Writer
Friday, January 22, 1999
San Francisco Chronicle

SAIPAN, Northern Marianas Islands -- The Chinese garment worker sat stiffly in her lawyer's office, staring at the floor. Her carefully manicured hands were clenched in her lap, red nails digging deeply into calloused palms.

She was in America and in a protected place. But she was scared stiff.

The woman is one of dozens of anonymous plaintiffs in a class-action lawsuit against some of the world's biggest clothing labels and their local contract manufacturers. The suit, filed last week in Saipan, California and federal courts, accuses the firms of exploiting her and thousands of other indentured foreign workers in sweatshop conditions on U.S. soil.

When the garment worker came to Saipan in 1997 from her home province of Jilin, in northern China, she expected life in America to be different.

But in the Northern Mariana Islands, a U.S. commonwealth in the western Pacific, she in many ways found less freedom than she had back home.

She was forced to work long hours of unpaid overtime in order to meet production quotas. Her supervisor yelled constantly and beat the workers "whenever he felt like it," she said. He also forced her and others to "lend" him money that was never repaid.

In the company dormitory where 120 workers lived, eight to a room, conditions were primitive: Food was unsanitary, and there were a total of three working toilets and five showers.

"They didn't respect us, and they made me feel like I wasn't a human being," the woman said.

No Way Out

As she worked 12- to 16-hour days stitching clothes for The Gap and other major clothing labels, she was trapped in an insidious system that gives the islands' employers near-total control over their 40,000 foreign contract workers. If they are fired for any reason, they are almost immediately deported to their home countries, where most face heavy debts to the corrupt government officials who gave them the jobs.

Late last year, the woman rebelled and filed a complaint with the islands' labor office.

"My supervisor came to me and said, `You have a choice: Either you withdraw the complaint, or you get sent back to China.' I didn't know what to do, so he fired me," she recalled.

Now she wanders Saipan's 10- mile-long urban and industrial zone, looking for another job in the booming garment industry. But she worries that if the manufacturers find out that she is a plaintiff in last week's lawsuit, she will be blacklisted -- or deported immediately to China, where she still owes $5,000.

"What will I tell my family?" the woman asked, gazing reproachingly at her lawyer. "What will happen to us?"

Her fingernails dug deeper into her hands as she spoke.

None of the plaintiffs who have given depositions in the case will reveal their names or those of their employers, because some are still working and others are looking for work.

When a visiting reporter asked the woman whether she would recommend to her younger sisters that they come to Saipan, she was silent for a long moment, her hands twisting violently.

"I'd tell them, `Stay where you are, don't, don't ever --' "

Her voice caught, and she stopped. Her body seemed to collapse upon itself. She jumped up and rushed from the room, sobbing.

The Northern Marianas' mix of tough working conditions, control and fear has engendered a struggle in Congress, where the Republican leadership is blocking attempts by Democratic lawmakers and the Clinton administration to eliminate the islands' longtime exemption from federal immigration, customs and minimum-wage laws.

The controversy illustrates how multinational corporations have spurred -- and become dependent on -- the large-scale flow of migrant labor across international borders. With this flow increasingly dominated by organized crime and corrupt governments, corporations sometimes find themselves complicit in a complicated web of abuses committed by their subcontractors, human-rights groups say.

In the Northern Marianas, local government officials and clothing industry officials insist that they are not responsible for those abuses.

"I don't know about the payments in China or what goes on there," said Richard Pierce, executive director of the Saipan Garment Manufacturers Association. "All we know is that while there may have been some problems here in the past, we've worked very hard to clean them up, and any federal takeover would simply make matters worse."

Amid the growing controversy, the industry has tried to put its best foot forward.

This week, Saipan's largest garment manufacturer, Tan Holdings Corp., showed reporters around its factories and employee bunkhouses. Conditions were clean and orderly -- although some facilities appeared to have been scrubbed especially for the occasion. The company, still nervous about publicity, did not allow photographs.

Three subsidiaries owned by the company's owner, Hong Kong- based shipping and gambling tycoon Willie Tan, are defendants in last week's lawsuit.

Some impartial observers dispute whether conditions are as bad as the plaintiffs allege. These observers say that in the past year, the garment industry has reacted to the accusations by fixing the worst problems.

$2.1 Million Owed in Overtime

But the U.S. Labor Department said Wednesday that it had been forced to intercede last year after five island employers had refused to pay more than $2.1 million in overtime pay owed to 1,315 workers.

In a statement, Labor Secretary Alexis Herman said: "We must stop the exploitation of workers on these islands. We will continue to hold employers accountable and will work to get U.S. minimum wage standards . . . extended to the Northern Marianas." (The commonwealth's minimum wage is $3.05 an hour.)

"The real issue is not whether the factories are total sweatshops or just partially so," said one U.S. official who took part this week in talks with the island's government over the controversy.

"In fact, they've probably improved some. What's more important is that none of these abuses are permitted under U.S. law, and the Northern Marianas shouldn't be able to pick and choose between the laws of the land just to benefit a few people."

The legal arguments, however, pale beside the overwhelming daily reality of an economy totally dependent on an imported proletariat.

Of the Northern Marianas' 27,000 U.S. citizens, most active workers are government employees, while the private sector is dominated by 40,000 workers from China, the Philippines, Thailand, Bangladesh and other Asian nations.

The islands' press reflects the same social division.

The two daily newspapers -- one of which is owned by Tan -- are staffed exclusively by Filipinos on one-year, renewable contracts. Like the garment workers, hotel workers, housekeepers and myriad other foreigners, these imported journalists must practice self-censorship for fear of being deported.

An estimated 10,000 foreigners are in Saipan illegally after overstaying their work permits. Among them are hundreds of Bangladeshis who have been marooned after being cheated by labor contractors.

A typical example is M.A.H. Durbar, who came in 1997 with 21 others who each paid $5,000 for jobs as security guards in Saipan -- a huge amount of money in Bangladesh, where the annual per-capita income is about $250.

Durbar, 26, was told by the labor contractor that he was going to Saipan U.S.A., America, the land of the free -- located only a train ride away from Los Angeles.

A fiasco awaited the newcomers.

Although the Northern Marianas government granted him a work permit, the jobs turned out to be nonexistent -- a collaborative scam mounted by the Bangladeshi contractors and an unscrupulous Saipan security firm, Benavente Security.

Although a Northern Marianas court last July ordered Benavente to pay the Bangladeshis $104,684, the local government has been unable -- or unwilling, or perhaps too incompetent -- to collect.

Stranded and Destitute

"I sold my house and I borrowed to get this opportunity to come to America," Durbar said as he sat cross-legged on the floor of the small house he shares with 16 other destitute Bangladeshis.

"Now I must go door to door, begging for work. I can't send money home to my family. They think I'm a liar, that because I'm in America, I must be making good money and spending it all at nightclubs, doing things with girls, rather than helping them pay what we owe."

"Now I know that the American flag doesn't mean much," he added. "In World War II, thousands of American soldiers died to put the flag in these islands. But I ask, what for? Where is justice? It's now the responsibility of the Americans to restore the dignity of that flag."

San Francisco Chronicle

Letters to the Editor can be faxed to: 415-777-7183, emailed to: chronletters@sfgate.com.